

WESTERN AUSTRALIA

STAMP AMENDMENT ACT 1995

No. 41 of 1995

AN ACT to amend the *Stamp Act 1921* and for related purposes.

[Assented to 24 October 1995.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Stamp Amendment Act 1995*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Stamp Act 1921** is referred to as the principal Act.

[* *Reprinted as at 21 March 1989.*

For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 200-02 and Act No. 22 of 1995.]

Section 27 amended

4. (1) Section 27 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) Sections 29 and 30 and this section do not apply to an instrument or a document relating to a transaction for which a statement is required to be prepared and lodged under section 31B tendered as evidence in any court on behalf of a party (not being a person who is liable to pay the duty in respect of the instrument or statement, as the case requires) if the court is satisfied that the party —

- (a) has informed, or will in accordance with arrangements approved by the court, inform the Commissioner of the name of the person liable to pay the duty in respect of the instrument or statement; and

(b) has lodged, or will in accordance with arrangements approved by the court, lodge —

(i) the instrument or a copy of the instrument; or

(ii) the document or a copy of the document,

as the case requires, with the Commissioner.

”.

(2) Subsection (3) as inserted in section 27 of the principal Act by this Act applies to an instrument or document executed before or after the commencement of this Act.

Section 31B amended

5. Section 31B of the principal Act is amended —

(a) after subsection (1) (d) by deleting the comma, substituting a semicolon and inserting the following —

“

or

(e) to which section 73F applies and which relates to a business licence of a prescribed kind,

”;

(b) by repealing subsection (1a); and

(c) by inserting after subsection (8) the following subsection —

“

(9) In subsection (1) —

“**business licence**” has the same meaning as in section 73F;

“instrument chargeable with *ad valorem* duty” means —

- (a) in the case of a transaction which causes the change referred to in subsection (1) (a) an instrument chargeable with such duty at the rate which would be applicable to an instrument of conveyance of the beneficial ownership of an estate or interest in the property to which the change relates;
- (b) in the case of a transaction which causes the change referred to in subsection (1) (aa) an instrument chargeable with such duty at the rate which would be applicable to an instrument of transfer of the beneficial ownership of a marketable security or right in respect of shares; or
- (c) in the case of any other transaction, an instrument chargeable with such duty at the rate applicable to an instrument effecting or evidencing that transaction.

”.

Section 73F inserted

6. (1) After section 73E of the principal Act the following section is inserted —

“

Acquisition of a licence to carry on a business activity

73F. (1) In this section —

“business licence” means —

- (a) a licence, permit or authority which is issued, granted or given under a written law and which is required by a written law to be held by a person carrying out an activity for gain or reward; or
- (b) a licence, permit or authority which is issued, granted or given under a law of the Commonwealth and which is required by a law of the Commonwealth to be held by a person carrying out an activity in the State for gain or reward.

(2) This section applies to a transaction by which a person (**“the licensee”**) who holds a business licence —

- (a) disposes of the business licence to another person;
- (b) agrees to the business licence being transferred to another person; or

- (c) agrees to relinquish the business licence, or agrees not to apply for a renewal of the business licence, so that it, or another business licence in respect of the same kind of activity, can be issued, granted or given to another person.

(3) For the purposes of this Act, where this section applies to a transaction the business licence to which the transaction relates is property situated in the State and the transaction is a transaction by which that property is transferred by the licensee and becomes the property of the other person referred to in subsection (2).

(4) Where this section applies to a transaction relating to a business licence issued, granted or given under a law of the Commonwealth, duty can only be charged to the extent of —

- (a) the value of the business licence so far as it authorizes the carrying out of an activity in the State; or
- (b) the portion of the consideration for the transaction that relates to the carrying out of an activity in the State under the authority of the business licence,

whichever is the greater amount.

”.

(2) Section 73F is enacted to avoid doubt and does not limit the application of the principal Act as enacted before the commencement of this section to transactions entered into in relation to business licences (within the meaning of that section) before that commencement.

Section 76C amended

7. Section 76C of the principal Act is amended —

- (a) in subsection (1) by inserting after “14” the following —

“
or, where subsection (6a) or section 76CA
applies, item 6
”;

- (b) in subsection (4) by inserting after “subsection (6a)” the following —

“ or section 76CA ”; and

- (c) by repealing subsection (13B) and substituting the following subsection —

“
(13B) Section 32 applies to an
assessment or a determination made by a
licensing authority under this Part as if it
were an assessment or determination, as
the case requires, made by the
Commissioner.
”.

Sections 76CA and 76CB inserted

8. (1) After section 76C of the principal Act the following sections are inserted —

“

**Duty on transfer of motor vehicle licence not
passing a beneficial interest**

76CA. (1) Upon application made in the manner
provided in subsection (4) the Commissioner may
authorize duty in accordance with item 6 of the

Second Schedule to be charged on a transfer of a licence for a motor vehicle when the Commissioner is satisfied that the proposed transfer —

- (a) is to be made for effectuating the appointment of a new trustee, or the retirement of a trustee, whether the trust is expressed or implied;
- (b) is to be made to a beneficiary by a trustee or by another person in a fiduciary capacity, except a discretionary trustee or a unit trustee, under any trust whether express or implied;
- (c) is to be made to a beneficiary by a discretionary trustee under any trust whether express or implied otherwise than in exercise of any power of appointment;
- (d) is to be made by a discretionary trustee of a trust, in exercise of a power of appointment over that motor vehicle, to a beneficiary who is a natural person for his or her own use and benefit, if —
 - (i) at the time when the discretionary trustee acquired the motor vehicle the beneficiary was named or described in the instrument which created the power of appointment as a beneficiary or as a member of a class of beneficiaries in whose favour the discretionary trustee was empowered by that instrument to appoint the motor vehicle; and
 - (ii) the motor vehicle was acquired by the discretionary trustee as such trustee of that trust;

(e) is to be made to the holder of a unit in a unit trust scheme by a unit trustee if —

- (i) the motor vehicle was acquired by the unit trustee as such trustee of that unit trust;
- (ii) the proposed transfer will have the effect of reducing the rights of the holder of the unit in respect of the property held by the unit trustee to the extent of the motor vehicle, or the value of the motor vehicle, proposed to be transferred; and
- (iii) the proposed transfer will not have the effect of varying, abrogating or altering the rights of the holder or holders of other units under the unit trust scheme in respect of the remaining property held by the unit trustee;

or

(f) does not otherwise come within this section but —

- (i) will not pass a beneficial interest in the motor vehicle licence proposed to be transferred;
- (ii) is not to be made in contemplation of the passing of a beneficial interest therein; and
- (iii) will not be part of, or made pursuant to, a scheme whereby any beneficial interest in the licence proposed to be

transferred, whether vested or contingent, has passed or will or may pass.

(2) A transfer of a licence for a motor vehicle which is accompanied by an authorization issued by the Commissioner under subsection (1) —

- (a) shall be charged with duty under item 6 of the Second Schedule; and
- (b) is not subject to the requirements of section 76C (8).

(3) Where duty has been paid under item 14 of the Second Schedule on a transfer, the person liable to pay the duty may, within a period of 12 months after the payment of that duty, make application in the manner provided in subsection (4) for the duty on that transfer to be re-assessed on the basis of item 6 of the Second Schedule and if the Commissioner is satisfied that the transfer is a transfer to which subsection (1) would have applied had application been made to the Commissioner under that subsection before the transfer was granted the Commissioner shall refund the difference between the duty paid and the duty so re-assessed as determined by the Commissioner.

(4) An application under subsection (1) or (3) shall —

- (a) be made in writing in a form approved by the Commissioner; and
- (b) be accompanied by —
 - (i) where the application is under subsection (1), an application for a transfer of the licence for the relevant motor vehicle; and

- (ii) such record or other information as the Commissioner may require.

(5) For the purposes of this section the Commissioner may by notice in writing require any person to provide, within such reasonable time as may be specified in that notice, such further record or other information specified in the notice as that person may be able to give.

(6) A person who, in an application under subsection (1) or (3) or in providing a record or information under subsection (5) provides a false record or makes a statement which is false in any material particular commits an offence under this Act.

- (7) In this section each of the terms —

“discretionary trustee”, “trustee” and “unit trust scheme” has the same meaning as it has in section 63.

Duty on certain licences and transfers of motor vehicles

- 76CB.** (1) In this section —

“eligible vehicle” means a motor vehicle which is a —

- (a) caravan (motor propelled);
- (b) mobile crane;
- (c) motor wagon;
- (d) tractor plant; or

- (e) tow truck,

as each of those motor vehicles is described in the First Schedule to the *Road Traffic Act 1974*, or such other class of motor vehicle as is prescribed for the purposes of this section;

“specialized equipment” means —

- (a) plant or equipment referred to in the description of an eligible vehicle in the First Schedule to the *Road Traffic Act 1974*; or
- (b) plant or equipment not so referred to, but which —
 - (i) forms part of an eligible vehicle; and
 - (ii) without which the eligible vehicle is not able to be licensed under the *Road Traffic Act 1974*.

(2) Subject to subsection (3), this section applies to an eligible vehicle to which specialized equipment is affixed where —

- (a) the value of that specialized equipment has been taken into account in determining the market value for the purposes of this Part of another motor vehicle which is licensed or was last licensed in the name of the person applying for a licence or transfer to which this Part applies (**“the applicant”**); and

- (b) the applicant intends to continue to use the specialized equipment in the future operation of the eligible vehicle.

(3) This section does not apply to a vehicle (**“the subsequent vehicle”**) where duty has been assessed, or a refund paid, under this section by reason of a vehicle (**“the initial vehicle”**) licensed in the name of the applicant being a vehicle to which this section applied, if the Commissioner or the licensing authority is of the opinion that the specialized equipment affixed to the subsequent vehicle is the same specialized equipment which was affixed to the initial vehicle.

(4) A person applying for a licence or transfer in relation to a vehicle, at the time of making that application, may apply in the manner provided in subsection (10) —

- (a) for the vehicle to be a vehicle to which this section applies; and
- (b) for duty under item 14 of the Second Schedule on that licence or transfer to be assessed on the market value of the vehicle determined as if the specialized equipment were not attached to that vehicle (**“net market value”**).

(5) A person making an application under subsection (4) shall comply with section 76C (8) in all respects except for the payment of duty with the application.

(6) Where a licensing authority is satisfied that a vehicle is a vehicle to which this section applies the licensing authority shall —

- (a) assess the amount of duty payable on the licence or transfer on the basis of its determination of the net market value of

the vehicle instead of the market value of that vehicle; and

- (b) notify the applicant of the amount of duty payable,

and the amount of duty payable shall be paid by the applicant upon receipt of the notification referred to in paragraph (b).

(7) Where a licensing authority is not satisfied that a vehicle is a vehicle to which this section applies the licensing authority shall notify the applicant of that decision and the amount of duty based on the market value shown in the statement made under section 76C (8) or as determined by the licensing authority under section 76C (9), as the case requires, shall be paid by the applicant upon receipt of that notification.

(8) Subsections (11) and (12) of section 76C apply to an application for a licence or transfer in relation to a vehicle to which this section applies as if a reference in those subsections to market value, were a reference to net market value.

(9) Where duty has been paid on a licence or transfer under this Part and the assessment of that duty was based on a determination of the market value of the vehicle, the person liable to pay the duty may, within a period of 12 months after the payment of that duty, make application in the manner provided in subsection (10) —

- (a) for the vehicle to be a vehicle to which this section applies; and
- (b) for the duty on that licence or transfer to be re-assessed on the basis of a

determination of the net market value of the vehicle,

and if the Commissioner is satisfied that a refund should be paid the Commissioner shall refund the difference between the duty paid and the duty so re-assessed as determined by the Commissioner.

(10) An application under subsection (4) or (9) shall —

- (a) be made in writing in a form approved by the Commissioner; and
- (b) be accompanied by such record or other information as the Commissioner may require.

(11) For the purposes of this section the Commissioner may by notice in writing require any person to provide, within such reasonable time as may be specified in that notice, such further record or other information specified in the notice as that person may be able to give.

(12) A person who, in an application under subsection (4) or (9) or in providing a record or information under subsection (11), provides a false record or makes a statement which is false in any material particular commits an offence under this Act.

”

(2) Section 76CA as inserted in the principal Act by this Act applies to an application for a transfer of a licence for a motor vehicle made after the commencement of this Act.

(3) Section 76CB as inserted in the principal Act by this Act applies to an application for a licence or transfer of a motor vehicle made after the commencement of this Act.

Consequential amendment

9. Section 73U (1) of the *Evidence Act 1906** is amended by deleting “, where a document is chargeable with stamp duty under the *Stamp Act 1921*,” and substituting the following —

“

but subject to section 27 (3) of the *Stamp Act 1921*,
where a document is chargeable with stamp duty
under that Act

”.

[* Reprinted as at 1 August 1992.

For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, pp. 69-70.]
